

From: [Schaub, Mike](#)
To: [Jamie Phillippe](#)
Subject: RE: WQ097 status & LDEQ communications down
Date: Tuesday, December 17, 2019 12:34:00 PM

Ok, thanks, I appreciate the response.

Mike Schaub
Water Quality Standards Program
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214-665-7314

From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Tuesday, December 17, 2019 11:47 AM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: RE: WQ097 status & LDEQ communications down

I spoke to Scott and he said no LPDES permits have adopted variances. He indicated it's been attempted in the past, but unsuccessfully every time.

From: Schaub, Mike <Schaub.Mike@epa.gov>
Sent: Thursday, December 12, 2019 5:16 PM
To: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Subject: RE: WQ097 status & LDEQ communications down

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Hi Jamie,

Sorry, don't think I ever responded to this. My question really had to do with variances for LPDES permits...have there been any variances adopted for any dischargers/waters in the state in the past?

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From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Thursday, December 5, 2019 3:45 PM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: RE: WQ097 status & LDEQ communications down

[Mike,](#)

I am unaware of any federal permits that have required a WQS variance in Louisiana. Even if it did, the underlying WQS would be used during the 401 WQC process. To the best of my knowledge, WQS variances are specific to 402 LDPES permits, which are routinely up for renewal every five years. Most activities described in 404 permits are completed within five-years, not requiring permit renewals.

Based upon my experience with 401 WQC's, they are a relatively powerful regulatory mechanism to bring proposed activities described in Corps 404 permits into compliance with site-specific WQS's and to prevent/minimize potential WQS-related issues in the future. Because a majority of 404 permits are for proposed activities, we are better able to alert permittees of WQS-related issues ahead of time and remedy them prior to construction. For example, let's say there's a residential development requiring a 404 permit in an impaired subsegment for fecals and DO, and they propose using an insufficient wastewater treatment system. I believe inserting a permit condition through the 401 WQC process that requires the applicant to use an adequate level of sanitation addresses site-specific WQS's more appropriately than a WQS variance. It would get them into compliance from the start, instead of potentially worsening water quality and playing catch up years on end. Another issue is which part of the activity is "short-term" requiring variance. The clearing of land would be short-term in my example, but not the effluent generated by the development.

I concur that for the purposes of 303(d), states should rely on underlying WQS's, and not WQS variances. As I said previously, the same goes for 401 WQC's.

Please let me know if I didn't fully address something.

Thanks,
Jamie

From: Schaub, Mike <Schaub.Mike@epa.gov>
Sent: Thursday, December 5, 2019 2:36 PM
To: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Subject: RE: WQ097 status & LDEQ communications down

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Thanks Jamie. That makes sense. So do you have an implementation provision that speaks to the state's ability/authority to certify a permit that contains a variance – or is this just inherent under 401 authority? I would assume the latter.

My understanding is that that particular language was included in the WQS regulation revision to be clear that where a WQS variance is approved, the state can rely on that relaxation of the WQS under the variance, when it reviews a request for a 401 certification of a federally-issued permit. Otherwise, there could be a disconnect when the state certifies that the proposed federal permit will comply with the WQS (original standard) v. the standard applicable under the variance (likely approved to give the facility relief).

One side note for clarification: for 303(d), the state still has to rely on the underlying WQS, and not the variance.

Just curious, has LDEQ/EPA ever issued a variance under the existing provision in LA's WQS? That was a question someone raised here, and I assume the answer is no, but thought I'd ask.

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From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Thursday, December 5, 2019 8:14 AM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: RE: WQ097 status & LDEQ communications down

1) I came from a 401 WQC background, so I can give you a precise response. Legal considers variances as an instrument for permit actions and 401 WQC's are not permit actions; Corps 404 and 402 LPDES permits are permit actions. A 401 WQC is either an approval or disapproval that an activity described in a permit action will comply with site-specific WQS's (LAC 33:IX.1505 Definitions). A 401 WQC can specify conditions on a permit action (LAC33:IX.1507.F.3.b) which in an indirect form of a variance.

2) There are no changes to those tables. It has do with the way legal tracks changes, without using track changes in Word. A lot of it was odd to me too.

From: Schaub, Mike <Schaub.Mike@epa.gov>
Sent: Wednesday, December 4, 2019 5:38 PM
To: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Subject: RE: WQ097 status & LDEQ communications down

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Jamie,

Did a quick review of this today, and have a couple questions:

1. Why do you think the phrase "The state may also use the approved WQS variance when issuing certifications under Section 401 of the Clean Water Act" was taken out? I don't see this as problematic, but I would assume that such an allowance is appropriate. Perhaps they're concerned with the short term nature of variances not working well for 401 certs since the variance may expire - may require revisiting of 401 certs?
2. So why did they remove the tables with criteria abbreviations and codes but keep the preceding references to them? Seems odd.

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From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Wednesday, December 4, 2019 7:54 AM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: RE: WQ097 status & LDEQ communications down

Mike,

WQ097 will be published in the December 20, 2019 Louisiana Register. The attached file has all of the changes that I could identify between the version of WQ097 going into the LA Register compared to the last version you reviewed. I've added comments describing each change. In most cases, sentences were rephrased for clarity. I noticed several sections without changes are in the latest version of WQ097. I'm guessing this was done to help tracking; I've identified all sections where this occurs. Also in a few cases, the LAC was cited instead of the CFR.

One item to call out is Subsegment 040807 (Ponchitolawa Creek). During the eLMRAP delineation, it was broken out and erroneously given an ONRW designated use. The waterbody is not scenic according to LDWF.

I'll e-mail you once the public website is updated.

Thanks,
Jamie

From: Schaub, Mike <Schaub.Mike@epa.gov>
Sent: Thursday, November 21, 2019 11:18 AM
To: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Subject: RE: WQ097 status & LDEQ communications down

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That sounds great, thanks for the update! Does the Register get updated weekly, or once monthly? Are you still anticipating late December timeframe?

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From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Thursday, November 21, 2019 10:41 AM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: RE: WQ097 status & LDEQ communications down

It sounds like the Legislature will accept WQ097 late. Barring any delays resulting from their review, it should be published in the December 2019 Louisiana Register. I'll work on updating the LDEQ website to reflect the rule's status. I'll also work on identifying the rearranged portions from the last version of WQ097 that you commented on.

From: Schaub, Mike <Schaub.Mike@epa.gov>
Sent: Wednesday, November 20, 2019 4:20 PM
To: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Subject: RE: WQ097 status & LDEQ communications down

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Yeah, I heard about that from Al. Thanks for the update on the rule and the possibility of delays. Will pass that along here.

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From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Wednesday, November 20, 2019 2:15 PM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: WQ097 status & LDEQ communications down

Mike,

Yesterday, Louisiana's computer system was attacked by ransomware. Except for e-mail, all other communications are down.

Legal has completed their review of the TR rule (WQ097). There were some sections they deemed necessary to rearrange. Right now, I don't have an electronic copy for you to point out the edits. I believe none of the edits are substantive, only cosmetic.

Depending on computer issues, there may be a one month delay in the rule's publication in the Louisiana Register (from December 2019 to January 2020).

Thanks,
Jamie